



**US Army Corps
of Engineers®**
New England District

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ENDANGERED SPECIES

The Endangered Species Act of 1973 (ESA) (16 USC 1536) provides for the conservation of endangered and threatened species of fish, wildlife, and plants. Federal agencies must ensure that proposed actions do not jeopardize the continued existence of any endangered or threatened species, or cause the destruction or adverse modification of their habitat. Project's that undergo federal review, such as the Cape Wind EIS, must identify practicable alternatives to conserve or enhance these protected species.

The National Marine Fisheries Services (NMFS) Office of Protected Resources (OPR) is generally charged with the implementation of the ESA for marine species. The U.S. Fish and Wildlife Service (USFWS) generally implements programs and regulations for terrestrial and freshwater species under the ESA. USFWS has jurisdiction over federally protected avian species.

The Corps of Engineers EIS scope specifies the endangered/threatened species that must be addressed in the EIS and in a Biological Assessment. These include three species of endangered great whales (right, humpback, and fin whales); three species of threatened or endangered sea turtles (Kemp's ridley, leatherback, and loggerhead turtles); two seals (the gray seal - a Species of Special Concern in Massachusetts and the harbor seal, both per MEPA request); and three avian species (Roseate tern, piping plover and, per MEPA request, the common tern which is listed as a Species of Special Concern in Massachusetts). The seals are not federally listed threatened or endangered species but are protected under the Marine Mammal Protection Act.

On September 26, 2002, the Corps issued letters to NMFS and to USFWS initiating consultations pursuant to Section 7 of the Endangered Species Act in order to determine whether or not the Cape Wind project may adversely affect the species listed above. Review of the Biological Assessments and other pertinent information as noted in the EIS scope will be completed during these consultations. The consultation process between USACE and the agencies, NMFS and USFWS, typically leads to one of the following determinations regarding the Project's potential to affect the listed species:

- No effect or no species present
- Not likely to adversely affect
- Likely to adversely effect
- May affect (triggers formal consultation)
- Jeopardy opinion

The Services may either concur or not concur with the finding(s) of the Biological Assessment. NMFS and/or USFWS will provide a Biological Opinion assessing the likelihood of the Project to adversely effect species or critical habitat and to provide recommendations to avoid or minimize the take of species and habitat. When the agencies provide recommendations or conservation measures to the Corps regarding permit applications, these are usually incorporated as project modifications or permit conditions.